

**UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW MEXICO**

In re:

Fred Dale Van Winkle,

Debtor,

and

Brian Van Winkle, not in his personal capacity
but solely as co-personal representative
of the estate of Fred Van Winkle, and **Tammy
Sprague**, not in her personal capacity but solely as
co-personal representative of the estate of Fred
Van Winkle,

Plaintiffs,

vs.

Belleview Valley Land Co., a New Mexico
corporation, **John H. Williams**, and **Ellen B.
Williams**,

Defendants.

Case No. 13-11743-t7

Adv. No. 20-01022

**REFILING OF DEFENDANTS' EXHIBITS TO THE
MOTION FOR SUMMARY JUDGMENT**

B1 (Official Form 1)(04/13)

Case 20-01022-t Doc 16 Filed 10/30/20 Entered 10/30/20 16:21:45 Page 2 of 26

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Van Winkle, Fred Dale	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed: New Mexico	Case Number: 11-13861	Date Filed: 8/29/11	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: - None -	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input checked="" type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes) <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="margin-left: 40px;"> _____ (Name of landlord that obtained judgment) </div> <div style="margin-left: 40px;"> _____ (Address of landlord) </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(d))			

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

Van Winkle, Fred Dale

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.
 [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
 [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Fred Dale Van Winkle

Signature of Debtor Fred Dale Van Winkle

X

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

May 21, 2013

Date

Signature of Attorney***X** /s/ R. "Trey" Arvizu, III

Signature of Attorney for Debtor(s)

R. "Trey" Arvizu, III 6959

Printed Name of Attorney for Debtor(s)

Arvizulaw.com, Ltd.

Firm Name

PO Box 1479

Las Cruces, NM 88004

Address

Email: trey@arvizulaw.com

(575) 527-8600 Fax: (575) 527-1199

Telephone Number

May 21, 2013

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X

Signature of Foreign Representative

Printed Name of Foreign Representative

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.

United States Bankruptcy Court

District of New Mexico

Case No. 13-11743-j7

Chapter 7

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Fred Dale Van Winkle
PO Box 1691
Ruidoso, NM 88355

Last four digits of Social Security or other
Individual Taxpayer-Identification No(s)., (if any):

xxx-xx-9361

Employer's Tax-Identification No(s)., /Other No(s) (if any):

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 727 of title 11 United States Code (the Bankruptcy Code).

BY THE COURT

Dated: 8/26/13

Robert H. Jacobvitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXHIBIT "2"

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.



IT IS ORDERED

Date Entered on Docket: December 4, 2013

Robert H. Jacobvitz

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE:
FRED DALE VAN WINKLE,

Debtor.

)
)
)
)

No. 13-11743-j7

<p>ORDER LIFTING STAY AS TO DEBTOR'S OTERO COUNTY PROPERTY</p>

SUBMITTED BY:
Martin, Dugan & Martin
W. T. Martin, Jr.
509 W. Pierce St.
P.O. Box 2168
Carlsbad, NM 88221-2168
(575) 887-3528
Fax (575) 887-2136
e-mail: martinlaw@zianet.com

EXHIBIT "3"

THIS MATTER came before this Court on a telephonic hearing at 11:15 a.m. on November 25, 2013, upon the *Motion to Lift Stay* filed by **Bellevue Valley Land Co., Inc., John H. Williams and Ellen B. Williams** (*hereinafter jointly referred to as "Williams"*). Williams appeared by and through Williams' attorney of record, W. T. Martin, Jr. The Debtor, **Fred Van Winkle**, appeared by and through his attorney, R. "Trey" Arvizu, III. **Brian Van Winkle**, who had filed an objection to the Motion did not appear. This Court heard argument of counsel and has determined that the Williams Motion should be granted and **Brian Van Winkle's** objection denied.

IT IS THEREFORE ORDERED THAT:

1. Williams' *Motion to Lift Stay* be, and it hereby is, granted.
2. The lifting of the stay only pertains to the Otero County property to which Williams' judgment lien has attached.
3. Williams may proceed with a foreclosure action to enforce the judgment lien as to the Debtor's Otero County property.
 - a. Any surplus proceeds received from the Special Master's sale following a foreclosure judgment shall be paid to the Trustee.
4. **Brian Van Winkle's** objection is overruled and denied.

###END OF ORDER###

SUBMITTED BY:
Martin, Dugan & Martin

s/submitted electronically
By _____

W. T. Martin, Jr.
509 W. Pierce St.
P.O. Box 2168
Carlsbad, NM 88221-2168
(575) 887-3528
Fax (575) 887-2136
e-mail: martinlaw@zianet.com
Attorney for Williams

Approved by E-mail on December 2, 2103

R. "Trey" Arvizu, III
P.O. Box 1479
Las Cruces, NM 88004-1479
(575)-527-8600
Fax (575) 527-1199
Attorney for Debtor

Approved by E-mail on Nov. 26, 2103

Clarke Coll, Trustee

SERVICE

Martin, Dugan & Martin certifies that the following are entitled to service of the Order:

R. Trey Arvizu, III
P.O. Box 1479
Las Cruces, NM 88004

Clarke Coll
P.O. Box 2288
Roswell, NM 88202

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:

FRED DALE VAN WINKLE,

Debtor.

No. 13-11743-j7

**MOTION TO COMPEL TRUSTEE'S ABANDONMENT OF
ASSETS PURSUANT TO 11 U.S.C. §554**

Debtor, a party in interest for purposes of this Motion, through undersigned counsel, files this Motion pursuant to 11 U.S.C. §554(b) and Bankruptcy Rule 6007(b) based on the following grounds:

1. Debtor filed for chapter 7 bankruptcy relief on May 21, 2013.
2. The Debtor disclosed his homestead on Schedule A of his schedules and statements.
3. The property is fully exempt and/or subject to liens. There is no equity in the property.
4. The Debtor recently amended schedule B to include a right of redemption which arose post-petition on property foreclosed in Otero County. It is arguable that the right of redemption is not property of the estate; however, Debtor requests that the trustee abandon the property that was subject to the liens including any redemption rights associated with the property. The right of redemption would require that the trustee redeem property with funds that he does not have available.
5. The Assets are burdensome and of no potential value to the estate.

EXHIBIT "4"

6. The Trustee has been contacted and takes no position in regard to this Motion.

WHEREFORE, Debtors respectfully request that the Court enter an Order granting this Motion which would allow the Debtor to enter an Order abandoning the assets.

Respectfully Submitted,

S/electronically Filed 3.20.15

R. "Trey" Arvizu, III
Attorney for Debtor
P.O. Box 1479
Las Cruces, NM 88004
(575)527-8600
(575)527-1199 (fax)
trey@arvizulaw.com

I CERTIFY that the foregoing was electronically filed with the Court via the CM/ECF system. All attorneys and parties identified with the Court for electronic service on the record in this case were served by electronic service in accordance with the CM/ECF system on this 20th day of March, 2015,

and mailed via U.S. Mail to all parties listed in the bankruptcy court's mailing matrix.

S/electronically submitted



IT IS ORDERED

Date Entered on Docket: April 15, 2015

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FRED DALE VAN WINKLE,

Debtor.

No. 13-11743-j7

ORDER ABANDONING ASSETS PURSUANT TO 11 U.S.C. §554

This matter came before the Court on the Debtor's Motion to Compel Trustee's Abandonment of Assets Pursuant to 11 U.S.C. §554 filed March 20, 2015 as docket entry #64 (the "Motion"). An Order Granting the Debtors' Motion was submitted and entered by the Court contemporaneously herein. The Court being fully advised hereby:

ORDERS ADJUDGES AND DECREES that the Debtor's assets described as his personal residence located at 702 White Mountain, #11, Ruidoso, New Mexico and his right of redemption regarding property that was foreclosed post-petition in Otero County described in amended schedules filed on March 18, 2015 as docket entry #62 are hereby deemed abandoned and removed from the Debtor's bankruptcy estate.

END OF ORDER

EXHIBIT "5"

Respectfully Submitted,

Via electronically 4.14.15

R. "Trey" Arvizu, III

Attorney for Debtor

P.O. Box 1479

Las Cruces, NM 88004

(575)527-8600

(575)527-1199 (fax)

trev@arvizulaw.com

STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT COURT

BELLEVUE VALLEY LAND CO., a New
Mexico corporation, and JOHN H. WILLIAMS
and ELLEN B. WILLIAMS, husband and wife,

Plaintiffs,

v.

Cause No. CV-2010-01054
Judge James Waylon Counts

TAMMY SPRAGUE, Personal Representative
of the Estate of FRED VAN WINKLE, Deceased,

Defendant,

And

BRIAN VAN WINKLE and JUDITH A.
VAN WINKLE, husband and wife,

Defendants-in-Intervention.

PETITION FOR REDEMPTION

Defendant, Tammy Sprague, personal representative of the estate of Fred Van Winkle, deceased, by and through her counsel, Law Firm of Kyle H. Moberly, P.C., hereby petitions this Court, pursuant to § 39-5-18 NMSA 1978 (as amended), to redeem the real estate sold pursuant to the judgment entered by this Court in this action. As grounds for this petition, Defendant states:

1. On July 8, 2014, Special Master John R. Hakanson sold the following described real estate (the "**Property**") in Otero County, New Mexico, to Plaintiffs John H. Williams and Ellen B. Williams (collectively, the "**Purchasers**") for \$67,000, pursuant to the Final Judgment Foreclosing Plaintiffs' Judgment Lien that this Court entered on May 22, 2014:

Petition for Redemption
Bellevue Valley Land Co. v. Sprague
Cause No. CV-2010-01054

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A tract of land in the Northeast Quarter (NE ¼) of Section 24, T15S, R9E, NMPM, Otero County, New Mexico, described metes and bounds as follows:

Beginning at the East One—Quarter corner (E ¼) of Section 24 and going S 89°51'38" W along the East/West centerline of said Section 24, a distance of 1525.75 feet; Thence N 00°37'16" W, a distance of 858.92 feet; Thence S 89°50'08" E, a distance of 1531.80 feet; Thence S 00°13'11" E, a distance of 850.76 feet to the said place of beginning.

And

LOT 5, RANCH'S OF RIATA, OTERO COUNTY, NEW MEXICO, as shown on plat Book 65, Page 21, records of Otero County, New Mexico.

And

ANY ADDITIONAL LAND WITHIN THE RANCH'S OF RIATA LESS LOTS 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

including that certain well and all water rights appurtenant thereto which is located on the above-described property.

2. Pursuant to paragraph (2) of subsection A of § 39-5-18 NMSA 1978 (as amended), the Property may be redeemed by the former defendant owner of the Property by filing a petition for redemption in this action and by depositing in the office of the clerk of this Court the sum of the amount paid at the foreclosure sale by the Purchasers, with interest from the date of the sale at the rate of 10% a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed, paid by the Purchasers after the date of the sale, with interest on the taxes, interest, penalties and payments made on liens or

mortgages at the rate of 10% a year from the date of payment, at any time within nine months from the date of the sale.

3. Subsection D of § 39-5-18 NMSA 1978 (as amended) provides, in pertinent part, that the term “owner” includes the former defendant owner’s “personal representatives, heirs, successors and assigns.” Therefore, the Property may be redeemed by Defendant.

4. On July 23, 2014, this Court entered an Order Approving Special Master’s Report and Granting Deficiency Judgment. On July 28, 2014, this Court entered an Amended Order Approving Special Master’s Report and Granting Deficiency Judgment. Subsection E of § 39-5-18 NMSA 1978 (as amended) provides that “For the purpose of this section, ‘date of sale’ means the date the district court order confirming the special master’s report is filed in the office of the clerk of the court.” Therefore, the nine-month period for redeeming the Property ends no earlier than April 23, 2015, and no later than April 28, 2015.

5. Upon information and belief, the Purchasers paid \$311.29 on July 25, 2014, to satisfy the property taxes assessed against the Property for 2013, and the interest and penalties accrued thereon, and paid \$595.48 on December 10, 2014, to satisfy the property taxes assessed against the Property for 2014. Upon information and belief, the Purchasers have not made any other payment since the date of the sale of property taxes assessed against the Property, or interest or penalties accrued thereon.

6. There is no prior lien or mortgage against the Property that was not foreclosed by the sale.

7. Upon information and belief, the amount of money necessary to redeem the Property as of April 20, 2015, is \$73,200.94, which is calculated as follows:

Purchase price	\$67,000.00
interest (286 days @ \$18.35615/day)	5,249.86
2013 property taxes, interest and penalties	311.29
interest (269 days @ \$0.08528/day)	22.94
2014 property taxes	595.48
interest (131 days @ \$0.1631)	<u>21.37</u>
TOTAL	\$73,200.94

WHEREFORE, Defendant respectfully requests that this Court grant the following described relief:

A. Enter an order forthwith, and by no later than April 23, 2015, that requires the clerk of this Court to accept Defendant's deposit of \$73,200.94 into the Court's registry, which, upon information and belief, is the amount of money necessary to redeem the Property as of April 20, 2015;

B. At a hearing, determine the amount of money necessary to redeem the Property;

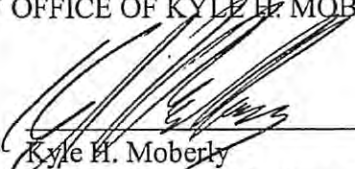
C. At the conclusion of the hearing, order the clerk of this Court to issue a certificate of redemption to Defendant upon such terms and conditions as this Court deems just; and

D. Grant such other and further relief as this Court deems just and proper.

Respectfully Submitted,


LAW OFFICE OF KYLE H. MOBERLY, P.C.

By: _____


Kyle H. Moberly

Attorney for Defendant Tammy Sprague,
Personal Representative of the Estate of Fred
Van Winkle, Deceased
2460 S. Locust Street, Suite E
Las Cruces, NM 88001
(575) 541-1278

I HEREBY CERTIFY that a true and correct copy of the foregoing petition for certificate of redemption was mailed to Martin, Dugan & Martin, Attorneys for Plaintiffs, P.O. Box 2168, Carlsbad, New Mexico 88221, and mailed to Brian Van Winkle and Judith A. Van Winkle, P.O. Box this 20th day of April, 2015.



KYLE H. MOBERLY

STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT COURT

BELLEVUE VALLEY LAND CO., a New
Mexico corporation, and JOHN H. WILLIAMS
and ELLEN B. WILLIAMS, husband and wife,

Plaintiffs,

v.

Cause No. CV-2010-01054
Judge James Waylon Counts

TAMMY SPRAGUE, Personal Representative
of the Estate of FRED VAN WINKLE, Deceased,

Defendant.

And

BRIAN VAN WINKLE and JUDITH A.
VAN WINKLE, husband and wife,

Defendants-in-Intervention.

**ORDER AUTHORIZING DEPOSIT OF FUNDS IN
CONNECTION WITH REDEMPTION OF REAL ESTATE**

THIS MATTER comes before the Court on the petition of the Defendant, Tammy Sprague, personal representative of the estate of Fred Van Winkle, deceased, pursuant to Section 39-5-18 NMSA 1978 (as amended), to redeem the real estate sold pursuant to the judgment entered by this Court in this action. Defendant seeks to deposit into the Court's registry the sum of \$73,200.94, which, according to the petition, is the amount of money necessary to redeem that real estate as of April 20, 2015.

Order Authorizing Deposit of Funds in
Connection with Redemption of Real Estate
Bellevue Valley Land Co. v. Sprague
Cause No. CV-2010-01054

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The Court being sufficiently advised in the premises, hereby orders the clerk of this Court to accept Defendant's deposit of \$73,200.94 into the Court's registry, said sum to be held in an interest-bearing account until the rights of all parties can be determined by further order of the Court.

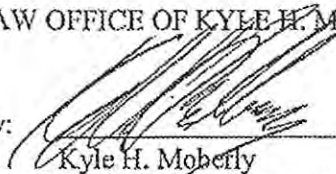


JUDGE JAMES WAYLON COUNTS

Submitted by:

LAW OFFICE OF KYLE H. MOBERLY, P.C.

By:



Kyle H. Moberly
Attorney for Defendant Tammy Sprague
Personal Representative of the Estate of
Fred Van Winkle, Deceased
2460 S. Locust Street, Suite E
Las Cruces, NM 88001
(575) 541-1278

Order Authorizing Deposit of Funds in
Connection with Redemption of Real Estate
Bellevue Valley Land Co. v. Sprague
Cause No. CV-2010-01054

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**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

Bellevue Valley Land Co, a New Mexico
corporation, and **John Williams** and **Ellen B.
Williams**, husband and wife,

Plaintiffs,

vs.

Tammy Sprague, Personal
Representative of the Estate of
Fred Van Winkle, Deceased,

Defendants/Petitioner,

and

Brian Van Winkle and
Judith Van Winkle,

Defendants-in-Intervention.

No. CV-2010-01054

Judge James Waylon
Counts

PLAINTIFFS' RESPONSE TO PETITION FOR REDEMPTION

Martin, Dugan & Martin
W. T. Martin, Jr.
Kenneth D. Dugan
509 W. Pierce St.
P.O. Box 2168
Carlsbad, NM 88221-2168
(575) 887-3528
Fax (575) 887-2136
e-mail: martinlaw@zianet.com

EXHIBIT "8"

COME NOW Belleview Valley Land Co. ("BVL"), John Williams and Ellen B. Williams (collectively referred to as "*Plaintiffs*") by and through their attorney, W. T. Martin, Jr., of Martin, Dugan & Martin, and for their Response to Petition for Redemption filed by **Tammy Sprague**, Personal Representative of the Estate of **Fred Van Winkle**, Deceased (collectively referred to herein as "*Petitioner*" or "*Defendant*") would show:

1. Simultaneous with the filing of this Response, Plaintiffs are filing the following pleadings herein:
 - a. Plaintiffs' Complaint to Foreclose Judgment Lien and/or Deficiency Judgment Lien ("*Plaintiff's Complaint*"); and
 - b. Plaintiffs' Motion for Summary Judgment to Foreclose Judgment Lien and Supporting Brief ("*Plaintiffs' MSJ*").
2. Those pleadings -- Plaintiff's Complaint and Plaintiffs' MSJ and their attached exhibits -- set forth the factual and legal bases to support Plaintiffs' response and/or objections to the Petition for Redemption.
3. Accordingly, in lieu of repeating those matters herein, Plaintiffs incorporate by reference their Complaint and MSJ, and attached exhibits, as if set forth herein *verbatim*.
4. Based on the facts and legal arguments presented in Plaintiffs' MSJ, Plaintiffs request that the Court find and order (as requested and proven in Plaintiffs' MSJ):
 - A. **The Redemption Revives the Original Judgment Lien, Which Should Then Be Foreclosed as a Matter of Law Simultaneously With the Redemption.** (MSJ, p. 8)

1. The New Mexico Redemption Statute, NMSA § 39-5-18, Only Permits a Certificate of Redemption Upon “Such Terms and Conditions As the Court Deems Just.” (MSJ, p. 8)
 2. Redemption Restores the Parties to Their Pre-Sale Positions and Revives the Prior Judgment Lien. (MSJ, p. 9)
 3. This Court Has Foreclosure Authority. (MSJ, p. 11)
 4. This Court Should Order Re-Foreclosure and Re-Sale Simultaneously With the Redemption. (MSJ, p. 12)
- B. Alternatively, This Court Should Rule Issuance of Petitioner’s Certificate of Redemption Is Subject to Prior, Complete Payment By Petitioner of the Deficiency Judgment Lien. (MSJ, p. 12)
1. This Court Previously Recognized the Deficiency Judgment Is an Existing Lien on the Property. (MSJ, p. 12)
 2. Petitioner Waived Objection to the Deficiency Judgment Lien By Failing to Object to and/or Appeal the Prior Order Granting Deficiency Judgment. (MSJ, p. 13)
 3. Petitioner Also Waived Objection to and/or Estopped Themselves from Contesting the Prior Order Granting the Williams Complete Title to the Property. (MSJ, p. 14)
 4. This Court Should Order Petitioner to Pay the Deficiency Judgment as a “Condition” to Issuance of the Certificate of Redemption.
- C. Alternatively, This Court Should Exercise Its Equitable Powers Pursuant to Statute to Compel Payment of the Deficiency Amount and/or Re-Foreclosure. (MSJ, p. 15)
1. NMSA § 39-5-18(C) Mandates the Certificate of Redemption Include “Just” Terms and Conditions. (MSJ, p. 15).

2. Redemption Does Not Guarantee Clear Title. (MSJ, p. 16)
3. Petitioner Should Be Required to Satisfy the Deficiency Judgment. (MSJ, p. 16)
4. Alternatively, the Original Judgment Lien Should Be "Re-Foreclosed" As a Matter of Law and The Property "Re-Sold". (MSJ, p. 16)

WHEREFORE, Plaintiffs request that the Court rule:

1. The Petitioner's right to redemption herein is subject to the prior judgment(s), lien(s) and/or rights of Plaintiffs arising under the law, including but not limited to:
 - a. The rights granted pursuant to the Court orders and judgments noted above;
 - b. The rights granted by statute, including but not limited to N.M.S.A. § 39-5-18(C);
 - c. The rights granted by judicial law. See, e.g., Chapel v. Nevitt, 2009-NMCA-017; Construction Engineering & Mfg. Co. v. Don Adams Mining Co., Inc., 91 N.M. 238, 572 P.2d 1246 (N.M. 1977); and
 - d. Application of the doctrines of *res judicata*, law of the case, waiver, estoppel, failure to timely appeal, and other applicable legal doctrines.
2. Petitioner may only redeem the Property if, prior to redemption,
 - a. The Williams receive the purchase price and other amounts owing under the statute as provided for in NMSA § 39-5-18(A), as purchasers of the Property, including the amounts in the registry of the Court (\$73,200.94 as of April 23, 2015);
 - b. Petitioner pays Plaintiffs the Deficiency Judgment, including accrued attorneys' fees, interest and costs;
3. Alternatively, if Petitioner is permitted to redeem herein prior to payment of the Deficiency Judgment, the Court order that it will only issue the

Certificate of Redemption “upon such terms and conditions as it deems just,” including but not limited to:

- i. Ordering Petitioner to pay the Williams the (1) purchase amount and interest (\$73,200.94 as of April 23, 2015); and
 - ii. Ordering either:
 - a. Petitioner pay Plaintiffs the deficiency amount and interest (\$271,905.61 as of July 28, 2014); or, alternatively,
 - b. Ordering the Original Judgment and/or Deficiency Judgment are first, priority liens on the Property and the Certificate of Redemption, ordering the Property is foreclosed (again), and requiring the Property to be resold and the proceeds distributed to the Plaintiffs and issuance of a new deficiency judgment in favor of the Plaintiffs; and
 - iii. Ordering Petitioner to pay the Plaintiffs’ additional attorneys’ fees, interest and costs.
4. Petitioner may not redeem until and unless Plaintiffs’ deficiency judgment and liens are satisfied in full, and Plaintiffs are repaid for all costs incurred in repairing the Property from the vandalism which occurred prior to transfer of the property through the foreclosure sale and/or for improvements on the property.

Plaintiffs request judgment as requested above and such other orders as assure that the Property is utilized to the fullest extent possible to reduce such debts.

Martin, Dugan & Martin



By _____

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Martin, Dugan & Martin certifies on the 14th day of May 2015, it filed the foregoing Response electronically through the State of New Mexico's Odyssey File & Serve system, requesting that opposing counsel of record be served by electronic means, and faxed a copy of the Response to opposing counsel of record. A copy of the Response was also mailed U.S. First Class Mail to Brian & Judith Van Winkle, P.O. Box 141, La Luz, NM 88337.



W.T. Martin, Jr.